attributable to incumbent LEC tandem-switching and tandem-switched transport transmission costs that have not yet been reallocated to facilities-based rate elements. In access tariff revisions filed to become effective January 1, 1998, incumbent LECs must show all such facilities-related amounts that they anticipate will be reallocated in the future, including appropriate documentation, and calculate separate per-minute TIC charges for those minutes that use the incumbent LEC's local transport facilities and those that do not.

62. In remanding the interim rate structure, the D.C. Circuit instructed the Commission to "move expeditiously . . . to a cost-based alternative to the [TIC], or to provide a reasoned explanation of why a departure from cost-based ratemaking is necessary and desirable in this context."[128] For our rate structure to be "cost-based," costs must be recovered (1) only from the party that causes the costs to be incurred; and (2) in the manner in which the costs are incurred (*e.g.*, non-traffic-sensitive costs should be recovered on a non-traffic sensitive basis).[129]

63. Our *First Report and Order* identified certain costs within the TIC that more properly should be recovered through other access rate elements. These costs include additional trunking costs left unrecovered by rates set assuming a uniform loading of 9000 minutes of use per month on shared trunks, rather than rates set using actual traffic levels, as well as misallocated costs of central office equipment maintenance. In addition, we identified costs related to multiplexing, SS7 signalling, and host/remote trunking that are currently recovered through the TIC.[130] LECs must reallocate all of these costs to facilities-based rate elements in access tariffs filed to become effective January 1, 1998. In addition, one third of the 80 percent of the costs of the tandem switch currently assigned to the TIC will be reallocated to the tandem switching rate element on that date.

64. After January 1, 1998, the costs contained in the TIC that the Commission has identified as facilities-related will have two primary sources. The majority of the facilities-related TIC will consist of the portion of the incumbent LEC's tandem-switching costs not yet reallocated to the tandem-switching rate element. These costs will be reallocated to the tandem-switching rate element in two additional installments in tariffs filed to become effective on January 1, 1999, and January 1, 2000. In addition, from January 1, 1998, until

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[128] *CompTel*, 87 F.3d at 532.

[129] Our discussion here focusses on the development of a cost based rate *structure*, but does not address the separate question concerning the development of cost-based rate *levels*. *See, e.g.*, 47 U.S.C. § 252(d)(1)(A)(i) (requiring that rates for interconnection and unbundled network elements be cost-based); *First Report and Order* at ¶ 263 (concluding that a primarily market-based approach to reforming access charges and controlling rate levels would better serve the public interest than prescriptive action to set rate levels at forward-looking economic cost).

[130] *First Report and Order* at ¶¶ 210-223.

July 1, 1998, the TIC will also recover the costs of tandem-switched transport transmission facilities that are not recovered by the incumbent LEC from tandem-switched transport customers electing the unitary rate structure. These TIC amounts are also facilities-related. In the *First Report and Order*, we directed incumbent LECs to remove costs from the TIC "equal to the additional revenues realized from the new tandem-switched transport rates . . . implemented in accordance with the [final transport] rate structure."[131] Because the three-part rate structure will not take effect until July 1, 1998, we require incumbent LECs to estimate in their tariffs filed to become effective January 1, 1998, the amount by which their tandem-switched transport transmission revenues will increase under the three-part rate structure. This amount, currently contained in the TIC, is facilities-related and therefore subject to the exemption described in this order.

65. Neither the tandem-switching costs nor the tandem-switched transport transmission costs contained in the TIC relate to facilities used by purchasers of competitive alternatives to the incumbent LEC's transport facilities. The D.C. Circuit remanded the interim transport rate structure to the Commission in part because that rate structure did not recover the costs of the tandem switch in a cost-causative manner. Our *First Report and Order*, in reallocating these costs, remedies this situation as expeditiously as possible while minimizing the potential for rate shock that otherwise might accompany such a shift. Because these costs are incurred on behalf of the incumbent LEC's own transport operation, however, it would be inconsistent with the principles of cost-causation to prolong the recovery of these costs from users of competing transport facilities.

66. Our approach to access reform relies first on increasing market-based pressures as competition develops to place downward pressure on access charge levels. We conclude that, for this approach to succeed, we should develop a rate structure that permits maximum competitive pressure on each incumbent LEC revenue stream, absent compelling public policy reasons to the contrary. It would impair the effectiveness of our market-based approach for us to insulate a significant portion of the costs of the incumbent LEC's transport facilities from competition by mandating recovery of these costs from incumbent LEC competitors.

67. We recognize that, during the two-year transition period, our rules will continue to prohibit the incumbent LEC from allocating the full, embedded cost of the tandem switch to the tandem-switching rate element. The effect of our three-step reallocation process will be to permit a continued subsidy of the incumbent LEC's tandem switch by users of the incumbent LEC's direct-trunked transport facilities and minimize any rate shock for tandem-

[131] *First Report and Order* at ¶ 222. Targeted X-factor TIC reductions will not eliminate this component of the facilities-related TIC because these reductions only apply to non-facilities-related per-minute TIC amounts. *First Report and Order* at ¶¶ 235-238.

switched transport customers.[132] Because the incumbent LEC's competitors offering transport services will not be subject to this subsidy, they may enjoy a slight competitive advantage over the incumbent LEC.

68. We find, however, that the competitive benefits to be gained from recovering these costs only from the incumbent's customers and not from customers using competitive transport providers outweigh any potential dangers resulting from the small, temporary asymmetry caused by the TIC exemption we provide here. Even though the full costs of the incumbent LEC's tandem switch will not be borne by the users of the tandem switch until January, 2000, the effects of the TIC exemption will be reduced substantially before that time as the incumbent LEC collects an increasing proportion of the tandem-switching costs remaining in the TIC through PICCs. As discussed below, we continue to permit the incumbent LEC to assess the full PICC on each of its loops, without regard for the type or provider of the transport the IXC uses to transport the minutes generated by that loop from the end office to the IXC's facilities. As the portion of the incumbent LEC's tandem-switching costs that is recovered through the per-minute TIC decreases, any potential adverse effects of this small asymmetry will rapidly decrease. In contrast, if we were to mandate recovery of this portion of the incumbent LEC's tandem-switching costs from all customers using the incumbent LEC's local switching facilities, without regard for whether they make use of the incumbent LEC's transport facilities, we would insulate this revenue from much of the pressure we anticipate will develop as competitors enter the local service and access markets. The resulting delay in competitive entry would be harmful to consumers, who will benefit most from increased competition.

69. We revise the TIC exemption contained in our *First Report and Order*, however, to permit the incumbent LEC to impose the remaining non-transport costs assigned to the TIC on all minutes switched by the incumbent LEC at its end office, without regard for whether those minutes are carried on incumbent LEC or competitive transport facilities. In contrast to the portion of the incumbent LEC's tandem-switched transport costs that will remain in the TIC after January 1, 1998, we did not find in the *First Report and Order* that the remainder of the TIC could be associated definitively with particular interstate facilities on the record before us. Instead, we stated that a portion of these TIC amounts may result from the operation of the jurisdictional separations process, which allocates the costs of private line and switched services differently between the state and interstate jurisdictions, despite the fact that these two types of services use comparable facilities.[133] As a result, we recognized in the *First Report and Order* the possibility that rates for direct-trunked transport and tandem-

[132] Users of the incumbent LEC's direct-trunked transport facilities, however, often use incumbent LEC tandem-switched transport facilities for overflow traffic at peak calling hours. These users, therefore, receive a portion of the benefits of the tandem switching subsidy.

[133] *First Report and Order* at ¶ 225.

switched transport transmission facilities may not recover the full amount of the costs of switched facilities the separations process allocates to the interstate jurisdiction.[134]

70. We have recently begun a broad re-examination of the jurisdictional separations process that may eventually correct this problem.[135] In the meantime, however, we are unable to associate these TIC amounts with any particular interstate facilities. Instead, to the extent that this portion of the TIC may result in part from overallocation of costs to the interstate jurisdiction, thereby lowering intrastate rates, this portion of the TIC may be a form of implicit universal service support.[136] As such, it would be inequitable to mandate recovery of this portion of the per-minute TIC only from the incumbent LEC's transport customers. Because these amounts do not appear to be any more closely related to the incumbent LEC's interstate transport facilities than they are to any other interstate facilities of the incumbent, it is appropriate for all of the incumbent LEC's access customers, and not just its transport customers, to pay a share of this portion of the per-minute TIC. In the *First Report and Order*, we stated our commitment to minimize the potential of the per-minute TIC artificially to suppress demand for interstate toll services.[137] Because the non-facilities-related TIC is composed of amounts that have not been demonstrated to reflect usage-sensitive costs, it does have this undesirable effect. We have therefore required that it be eliminated expeditiously through targeting of the X-factor reductions to the interconnection charge service category and through conversion of the residual TIC to a flat-rated charge.[138]

71. In addition, we stated in the *First Report and Order* that a portion of the costs remaining in the TIC may result from our use of special access rates to develop initial geographically-averaged direct-trunked transport and tandem-switched transport transmission rates. We agreed in the *First Report and Order* that, while the use of such rates appears to have been appropriate in urban areas, these rates may not fully recover the higher costs of

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[134] *Id.*

[135] Jurisdictional Separations Reform and Referral to the Federal-State Joint Board, CC Docket No. 80-286, Notice of Proposed Rulemaking, FCC 97-354 (rel. Oct. 7, 1997).

[136] In the *Local Competition Order*, we permitted incumbent LECs to recover, for a limited period, of a charge equal to 75 percent of the TIC assessed on all interstate minutes traversing the incumbent LECs' local switches for which the interconnecting carriers pay unbundled local switching element charges. We permitted this charge based on our finding that the TIC, in part, consisted of contributions toward universal service. Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order, 11 FCC Rcd 15499, 15862-69 (1996), *aff'd sub nom. Competitive Telecommunications Ass'n v. FCC*, 117 F.3d 1068 (8th Cir. 1997).

[137] *First Report and Order* at ¶ 233.

[138] *Id.*

transport in less densely populated rural areas.[139] Because we are unable to quantify these cost differences, and because it is likely that the cost differential varies greatly across LECs and across study areas served by the same LEC, we did not mandate any immediate reallocation of costs from the TIC to rural transport rates. Instead, we expect that, as competition develops, the incumbent LECs will come under increasing pressure to deaverage transport rates under our existing deaveraging rules. We observe that, as with the costs discussed in the previous paragraph, recovery of rural transport costs through the TIC supports a conclusion that at least a portion of the non-facilities-related TIC may be related to the provision of universal service.[140]

72. We also here clarify that the "residual TIC" that the incumbent LEC should recover from PICCs includes all TIC amounts that have not been reassigned to other facilities-based rate elements, including the portion of the incumbent LEC's tandem switching costs that have not been reassigned to the tandem-switching rate element in tariffs filed to become effective on January 1, 1998, and January 1, 1999. We direct price cap LECs that will recover only a portion of their residual TIC from PICCs to allocate non-facilities-related TIC amounts and facilities-related TIC amounts between PICCs and per-minute charges on a *pro rata* basis. The incumbent LECs must reallocate the full amount of the costs of their tandem switch to the tandem switching rate element in installments on January 1, 1998, 1999, and 2000, whether they are then contained in per-minute charges or in PICCs.

73. Accordingly, we revise the TIC exemption contained in our *First Report and Order* to permit the incumbent LEC, in tariffs filed to become effective January 1, 1998, to impose that portion of the per-minute TIC that is not expected to be reassigned to particular facilities on a cost-causative basis on all transport minutes switched at its end office, without regard for whether those minutes are carried on incumbent LEC or competitive transport facilities. Per-minute TIC amounts that the LEC expects to reallocate to facilities-based rate elements, in contrast, may be assessed only on minutes transported on the incumbent LEC's own transport facilities.

74. TIC amounts that a price cap LEC will recover through PICC charges may be assessed to an IXC for a particular loop without regard for the type or provider of the transport the IXC uses to transport the minutes generated by that loop from the end office to the IXC's facilities. Although certain price cap LECs will recover a portion of the costs of

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[139] *First Report and Order* at ¶ 226.

[140] U S West Petition for Stay at 8. In the NPRM in this proceeding, we sought comment on how universal service support received under the new universal service support mechanisms should be allocated to reduce interstate rates and stated that "[s]ome of those support amounts may reduce the amount that would otherwise be recovered through the TIC." Access Charge Reform, *et. al.*, Notice of Proposed Rulemaking, Third Report and Order, and Notice of Inquiry, 11 FCC Rcd 21354, 21402 (1996) (NPRM).

their tandem-switching facilities during the transition through PICCs from IXCs that do not use the price cap LEC's transport facilities to transport all of the minutes generated on a particular loop, the administrative difficulties associated with calculating partial PICCs in this context outweigh the benefits to be gained from doing so. If an IXC were to use a combination of competitive- and incumbent LEC-provided transport facilities between an end office and its serving wire center, it would be needlessly complicated to determine the portion of the minutes generated on each loop that were carried on competitive transport links. Furthermore, unlike the per-minute TIC, the flat-rated PICC will not substantially alter the incremental cost of additional transport minutes transported over competitive transport facilities. Thus, even if an IXC pays a full PICC, this payment will not affect the IXC's decision whether to purchase additional transport minutes from the incumbent LEC or a competitive transport provider. As a flat-rated charge, the PICC will not artificially suppress demand for interstate toll telecommunications services.

75. In addition, the PICC is subject to competitive pressures, whether or not it recovers TIC amounts for traffic transported by the incumbent LEC's competitors. If the end user chooses an alternate provider of local service, the incumbent LEC will no longer recover any portion of the PICC for that loop. Thus, we conclude that the dangers associated with the recovery of the full PICC without regard for the transport provider are far more attenuated than the dangers that would be associated with recovery of facilities-related costs from per-minute TIC charges levied on competitive transport minutes.

76. We deny the petitions filed by U S West and NYNEX requesting a stay of the per-minute TIC exemption rule.[141] The practical effect of our revisions to the TIC exemption, however, will be to provide a substantial portion of the relief sought in the stay petitions. In light of these revisions, we believe that the petitioners are unlikely to succeed on the merits on review, that they will not suffer irreparable injury absent a stay, that a stay would cause substantial harm to the incumbent LECs' competitors, and that the public interest is best served by the TIC exemption described here. With respect to the portion of the TIC related to the costs of the incumbent LEC's interstate transport facilities, we conclude that there are sound policy reasons underlying our decision to maintain this exemption and, consequently, we find against the petitioners here.

[141] In determining whether to stay the effectiveness of one of its rules or orders, the Commission uses the four-factor test established in *Virginia Petroleum Jobbers Ass'n v. FPC*, 259 F.2d 921, 925 (D.C. Cir. 1958), as modified in *Washington Metropolitan Area Transit Comm'n v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977). Under that test, petitioners must demonstrate that: (1) they are likely to succeed on the merits on review; (2) they would suffer irreparable injury absent a stay; (3) a stay would not substantially harm other interested parties; and (4) a stay would serve the public interest. We find that neither NYNEX nor U S West has satisfied any of the four factors for granting a stay. In light of the substantial relief we have granted above, however, we provide only a brief analysis here of the petitioners' arguments.

77. We conclude that NYNEX's objections to the sufficiency of our notice are without merit. The NPRM in this proceeding provided adequate notice of the TIC exemption we ultimately adopted. Our NPRM in this proceeding stated that "to the extent that any portion of the TIC should properly be included in LEC transport rates, other than the TIC, the TIC provides the LECs with a competitive advantage for their interstate transport services because incumbent LEC transport rates are priced below cost while the LECs' competitors using expanded interconnection must pay a share of incumbent LEC transport costs through the TIC . . . . Our goal in this proceeding is to establish a mechanism to phase out the TIC in a manner that fosters competition and responds to the [*CompTel*] court's remand."[142] We went on to state, in the section of the NPRM entitled "Possible Revisions to the TIC," that "our goals are to move towards significantly more cost-based access rates and competition in the access and interexchange markets. The development of a competitive access market will be distorted by the assessment of the TIC as a surcharge on local switching. The TIC therefore will be unsustainable."[143] We sought comment on the extent to which various approaches to reducing the TIC would "achieve the goals of this proceeding" and asked parties to "address the relative merits of each [approach], or of other approaches that they may suggest."[144] We conclude therefore that, beyond reasonable question, our NPRM provided adequate notice of "the terms or substance of the proposed rule or a description of the subjects and issues involved."[145]

78. In any event, courts require only that the rule, as adopted, constitute a "logical outgrowth" of the proposed rule.[146] To satisfy this standard, courts ask "whether 'the purposes of notice and comment have been adequately served.'"[147] Factors to be considered include "whether a new round of notice and comment would provide the first opportunity for interested parties to offer comments that could persuade the agency to modify its rule;"[148] and whether "the notice given affords 'exposure to diverse public comment,' 'fairness to affected

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[142] NPRM, 11 FCC Rcd at 21402.

[143] NPRM, 11 FCC Rcd at 21407.

[144] NPRM, 11 FCC Rcd at 21409.

[145] 5 U.S.C. § 553(b)(3).

[146] *E.g.*, *National Mining Ass'n v. Mine Safety and Health Admin.*, 116 F.3d 520, 531 (D.C. Cir. 1997).

[147] *National Mining Ass'n v. Mine Safety and Health Admin.*, 116 F.3d at 531 (*quoting American Water Works Ass'n v. EPA*, 40 F.3d 1266, 1274 (D.C. Cir. 1994) and *Fertilizer Inst. v. EPA*, 935 F.2d 1303, 1311 (D.C. Cir. 1991)).

[148] *American Water Works Ass'n v. EPA*, 40 F.3d at 1274.

parties,' and 'an opportunity to develop evidence in the record.'"[149] We conclude that the NPRM language quoted above more than adequately meets this standard. The NPRM in this proceeding discussed possible revisions to the TIC rate element for nine full pages, sought comment on four specific TIC-reduction options, and invited commenters to suggest alternate approaches.[150] The NPRM in this proceeding discussed expressly the anti-competitive problems associated with the payment of TIC charges by competitive providers of transport services, stated that the TIC would be "unsustainable" in that form, and sought comment on approaches to reform that would "achieve the goals of this proceeding," among which was the adoption of a transport rate structure that would foster competition. In such circumstances, we conclude that commenters should have anticipated that the Commission might eventually adopt a TIC exemption for competitive transport providers,[151] that our NPRM afforded adequate notice of the Commission's eventual adoption of such an exemption, and that we provided an adequate opportunity for diverse public comment.

79. In response to the NPRM, several commenters, in their initial comments, proposed TIC exemptions for competitive transport. WorldCom, for example, argued that, "the Commission should restructure the TIC rate element . . . in a manner that maximizes competitive pressure on the charge. As local and full-service competition begin[s] to emerge, competitive carriers should be able to avoid the TIC to the extent that they win customers away from incumbent LECs. This will create competitive pressure for the LECs to reduce their TIC rate levels, without necessitating any prescriptive action by the Commission."[152] The fact that several commenters raised this solution in their comments, and in subsequent *ex parte* filings, supports our conclusion that the NPRM adequately raised this issue.

80. We also conclude that NYNEX's claims of irreparable harm are without merit. Although the TIC exemption may impact some incumbent LECs differently from others, the same can be said for virtually all of the rules we adopt, simply because of differences in the circumstances and business climate facing each LEC. Our focus in the context of a stay petition must be on individualized allegations of irreparable harm. We find that neither

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[149] *National Mining Ass'n v. Mine Safety and Health Admin.*, 116 F.3d at 531 (*quoting Association of Am. Railroads v. DOT*, 38 F.3d 582, 589 (D.C. Cir. 1994) and *Small Refiner Lead Phase-Down Task Force v. EPA*, 705 F.2d 506, 547 (D.C. Cir. 1983)).

[150] NPRM, 11 FCC Rcd at 21402-09.

[151] *See Small Refiner Lead Phase-Down Task Force v. EPA*, 705 F.2d at 549.

[152] Access Charge Reform, *et. al.*, CC Docket No. 96-262, *et. al*, Comments of WorldCom, filed January 29, 1997, at 65. *See also id.* at 60-64 (opposing TIC-recovery mechanisms that would have shielded the TIC revenue stream from competitive pressures because such mechanisms would, *inter alia*, eliminate market-based downward pressures access rates, impede competitive entry, harm consumers, and provide incumbent LECs with an unjustified revenue-entitlement).

petitioner has met that standard with respect to the TIC exemption we provide in this Order. Mere financial or economic losses do not, in and of themselves, constitute irreparable harm.[153] In addition, because this portion of the per-minute TIC is likely to be relatively small, in relation to the remainder of the TIC and other transport charges, the incumbent LECs are unlikely to suffer large-scale competitive losses as a result of the exemption, as modified here. In any event, we have long held that "revenues and customers lost to competition which can be regained through competition are not irreparable."[154]

81. In contrast, continued subsidy of the incumbent LECs' tandem switching facilities by competitors is incompatible with the development of competition in the local market. Without an exemption permitting new entrants to cease subsidizing incumbent LEC transport facilities, the incumbent LEC's revenue stream from facilities-related, per-minute TIC charges would be insulated from competition. These new entrants, having already shouldered financial burdens in seeking to compete with the established monopoly incumbent LEC, should not be required in addition to subsidize the facilities of the incumbent LEC against whom they compete. Such a result would cause continued harm to these new entrants, and would further delay the public interest benefits of competition. Thus, we conclude that the petitioners have failed to satisfy either of the last two factors we must consider in evaluating their stay petitions. Accordingly, we deny the stay petitions.

B. Deaveraged Tandem-Switched Transport Transmission Rates

82. We also take this opportunity to amend the language of section 69.111(c)(1) to specify the manner in which minutes are to be determined through June 30, 1998, in calculating tandem-switched transport transmission rates when an incumbent LEC has deaveraged rates by density zone. Section 69.111(c)(2), which applies after July 1, 1998, includes such language. The *First Report and Order* did not intend to take away the ability of incumbent LECs to deaverage transport transmission rates if they have met the requisite qualifications. Finally, we amend the references to section 69.124 in section 69.111 to refer to section 69.123.

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[153] *Wisconsin Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir 1985).

[154] Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Order, 11 FCC Rcd 11754, 11756-57 (1996) (*quoting Central & S. Motor Freight Tariff Ass'n v. United States*, 757 F.2d 301, 309 (D.C. Cir. 1985), *cert. denied*, 474 U.S. 1019 (1985)) (denying stay of certain provisions of the *Local Competition Order*).

V. RATE-OF-RETURN LECs

83. In the *First Report and Order*, we took steps to adopt, *inter alia*, a cost-based transport rate structure and to comply with the D.C. Circuit's *CompTel* remand.[155] As acknowledged in the *First Report and Order*, the *CompTel* remand applied to rate-of-return LECs as well as price cap LECs.[156]

84. Upon further consideration, we recognize that, absent clarification, some language in the *First Report and Order* may be ambiguous in delineating which of our decisions applied to all incumbent LECs, including rate-of-return LECs. For example, in Section III.C. of the *First Report and Order*, we directed "all incumbent LECs to discontinue the unitary rate structure option for the transmission component of tandem-switched transport, effective July 1, 1998."[157] In contrast to this language, we stated at paragraph 335 in the *First Report and Order* that we had restricted "application of the rules we adopt in this proceeding to the incumbent price cap LECs, with [three] limited exceptions," for: (1) "universal service support to the interstate revenue requirement for all incumbent LECs in Section VI.D;" (2) "the changes to the TIC that we adopt[ed] in Section III.D . . . will also apply to rate-of-return incumbent LECs;" and (3) "in Section VI.A . . . our exclusion of unbundled network elements from Part 69 access charges applies to all incumbent LECs."

85. We take this opportunity to clarify that, with two limited exceptions, the decisions made in Section III.C of the *First Report and Order* relating to the rate structure and rate levels for entrance facilities, direct-trunked transport, and tandem-switched transport apply to all incumbent LECs, including rate-of-return LECs.[158] The two exceptions are that we did not create for rate-of-return LECs separate rate elements for dedicated ports at the tandem switch and for multiplexers at the tandem switch.[159] Thus, for example, rate-of-return LECs must discontinue the unitary rate structure option for tandem-switched transport no later than July 1, 1998, when all incumbent LECs must use only the three-part rate structure for cost recovery.[160] These transport modifications that are applicable to rate-of-return LECS are in

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[155] *Comptel*, 87 F.3d 522.

[156] *First Report and Order* at ¶ 335.

[157] *First Report and Order* at ¶ 175.

[158] NPRM, 11 FCC Rcd at 21380-81.

[159] In tariffs filed to become effective January 1, 1998, rate-of-return LECs must reallocate the costs of these trunk ports and multiplexers from the TIC to other, currently-existing rate elements. *Access Charge* Sua Sponte *Reconsideration Order*, 12 FCC Rcd at 10122-23.

[160] *First Report and Order* at ¶ 175.

addition to those decisions made in Sections III.D, VI.A, and VI.D that also apply to rate-of-return LECs.[161]

VI. MEMORANDUM OPINION AND ORDER

86. The National Exchange Carrier Association, Inc. (NECA) asserts in its reconsideration petition that the Commission should revise on reconsideration the rule provisions governing calculation of NECA carrier common line (CCL) rates, without waiting for the conclusion of a separate proceeding on access charge reform for rate-of-return LECs. In the alternative, NECA requests that the Commission issue an order waiving section 69.105(b)(2)-(3) for NECA's pool, so as to allow NECA to reflect revised long term support (LTS) formula amounts in its CCL tariff rates effective January 1, 1998.[162] No party opposed or supported NECA's petition for reconsideration or waiver of the rule. We have decided to waive the specified rule provisions at this time, and make appropriate rule revisions in the separate proceeding.

87. Section 69.105(b) currently sets the NECA CCL tariff at the average of price-cap LECs' CCL charges. Prior to January 1, 1998, LTS is a variable amount, based on the difference between the revenues earned from charging a nationwide average CCL rate and the NECA pool CCL revenue requirement. In the *Universal Service Order*, we substituted federal universal service support payments for previously-received recovery from the interstate access charge system through LTS.[163] The rule revisions in the *First Report and Order* removed LTS amounts from price cap LEC CCL calculations, but postponed making conforming revisions in Section 69.105(b) to the CCL rate calculation for NECA tariff participants.[164]

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[161] In both Sections III.C. and III.D. of the *First Report and Order*, we explained that incumbent LECs must reallocate in three annual steps tandem switching revenues from the TIC to the tandem-switching rate element, excluding signalling and dedicated port costs allocated elsewhere in last May's order. This decision applies to rate-of-return LECs as well as price cap LECs.

[162] NECA Reconsideration Petition at 6.

[163] Federal-State Joint Board on Universal Service, Report and Order, 12 FCC Rcd 8776, 9164 (1997) (*Universal Service Order*). "[A]lthough we remove the LTS system from the access charge regime, . . . we enable rural LECs to continue to receive payments comparable to LTS from the new universal service support mechanisms . . . ." *Id.* at 9165.

[164] *First Report and Order* at ¶¶ 375-77. We justified the delay in making revisions to the NECA CCL calculations due to a failure to receive any comments as to how the NECA CCL rate calculation rules should be adjusted. According to NECA, however, notice and comment are unnecessary for a ministerial change to the CCL rate calculation rule in order to conform that rule to policy decisions made in the *Universal Service Order* and the *First Report and Order*.

88. Section 1.3 of our rules empowers the Commission to grant waivers of its rules if good cause is shown.[165] In this situation, NECA must demonstrate that special circumstances justify a departure from the general rule and that such a deviation will serve the public interest.[166] We conclude that NECA has demonstrated that continued application of Section 69.105(b)(2)-(3) would be contrary to the public interest in these circumstances. As we stated in the *Universal Service Order*, the "elimination of price-cap [incumbent LECs'] LTS obligations will allow their CCL charges to fall, but there is no corresponding reason for a reduction in the NECA CCL tariff. Yet under our current rules, the NECA CCL charge would fall simply because of our regulatory changes to price-cap [incumbent LECs'] LTS payment obligations. We must therefore establish a new method to set the NECA CCL tariff."[167]

89. Because changes in the recovery of LTS amounts and price-cap carrier CCL rate computations as adopted in the *First Report and Order* and *Universal Service Order* are scheduled to become effective on January 1, 1998,[168] grant of the waiver will allow NECA to conform its rates to decisions reached in the *Universal Service Order* by reflecting revised LTS formula amounts in its CCL tariff rates effective January 1, 1998. We therefore waive Section 69.105(b)(2)-(3) for the calculation of NECA's CCL pool rate that will become effective January 1, 1998,[169] on the condition that NECA must compute the Carrier Common Line charge as follows:

> (a) From the NECA pool aggregate Carrier Common Line revenue requirement amount, subtract: (1) aggregate End User Common Line charges; (2) aggregate Special Access Surcharges; and (3) the portion of per-line support that NECA

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[165] 47 C.F.R. § 1.3.

[166] *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164 (D.C. Cir. 1990); *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969).

[167] *Universal Service Order*, 12 FCC Rcd at 9170; *see also id.* at 9164, 9165-66, 9169.

[168] Prior to January 1, 1998, LTS is a carrier's total common line revenue requirement less revenues received from SLCs and CCL charges. *Universal Service Order*, 12 FCC Rcd at 8942 ("[B]eginning in 1998, rural carriers will recover from the new universal service support mechanisms LTS at a level sufficient to protect their customers from the effects of abrupt increases in the NECA CCL rates"). Rural and non-rural carriers that received LTS in 1997 will receive support from the new universal service mechanisms in 1998 that equals the 1997 LTS funding amount, adjusted by the percentage of change from 1995 to 1996 of the nationwide average loop cost. *Id.* at 8927, 8942; *See also* 47 C.F.R. § 54.303.

[169] At this time we anticipate that Section 69.105(b)(2)-(3) will be revised in time for tariff filings effective July 1, 1998. We are not revising this rule now because it is likely that the rule would need to be changed again in the near future if we decide to adopt a PICC and make other common line changes in the separate access reform proceeding for rate-of-return LECs.

CCL pool participants receive, in the aggregate, pursuant to 47 C.F.R. § 54.303.[170]
(b) The premium originating Carrier Common Line charge must be one cent per minute, except as described herein at (d), and
(c) The premium terminating Carrier Common Line charge must be computed by subtracting the projected revenues generated by the originating Carrier Common Line charges (both premium and non-premium) from the number calculated in (a) above, and dividing the remainder by the sum of the projected premium terminating minutes and a number equal to 0.45 multiplied by the projected non-premium terminating minutes, except as described herein at (d).
(d) If the calculations described in (c) above result in a per minute charge on premium terminating minutes that is less than one cent, both the originating and terminating premium charges for the NECA CCL pool participants must be computed by dividing the number calculated pursuant to (a) above by the sum of the premium minutes and a number equal to 0.45 multiplied by the non-premium minutes for the NECA CCL pool participants.

This NECA CCL charge calculation will reflect that now the CCL charge, rather than LTS, is a residual amount.

VII. FINAL REGULATORY FLEXIBILITY ANALYSIS

90. In the *First Report and Order*, we conducted a Final Regulatory Flexibility Analysis as required by Section 603 of the Regulatory Flexibility Act, as amended by the Contract with America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996).[171] The changes we adopt in this Order do not affect that analysis.

VIII. FINAL PAPERWORK REDUCTION ANALYSIS

91. We have required incumbent price cap LECs to provide IXCs with customer-specific data that specifies the number and type(s) of PICCs being assessed on each line. This requirement constitutes a new "collection of information," within the meaning of the Paperwork Reduction Act of 1995, 44 U.S.C. §§ 3501-3520. Implementation of this requirement will be subject to approval by the Office of Management and Budget as prescribed by the Paperwork Reduction Act. The Commission has requested emergency approval of this requirement to ensure that it may be effective on January 1, 1998.

[170] 47 C.F.R. § 69.502.

[171] *First Report and Order* at ¶¶ 419-440.

IX. ORDERING CLAUSES

92. Accordingly, IT IS ORDERED, pursuant to Sections 1-4, 201-205, 251, 254, 303, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 201-205, 251, 254, 303, and 405, and pursuant to section 1.108 of the Commission's rules, 47 C.F.R. § 1.108 that this Order on Reconsideration IS ADOPTED.

93. IT IS FURTHER ORDERED that section 69.153(g) of the Commission's rules, 47 C.F.R. §§ 69.153(g) IS AMENDED as set forth in the appendix.

94. IT IS FURTHER ORDERED that sections 69.4, 69.111(c)(1), 69.153(c)(1), 69.153(d)(1)(i), 69.153(d)(2)(i), and 69.155(c) of the Commission's rules, 47 C.F.R. §§ 69.4, 69.111(c)(1), 69.153(c)(1), 69.153(d)(1)(i), 69.153(d)(2)(i), and 69.155(c) ARE AMENDED as set forth in the appendix.

95. IT IS FURTHER ORDERED, pursuant to 47 U.S.C. § 154(i) and 47 C.F.R. § 1.3, that NECA's request for waiver of Section 69.105(b)(2)-(3) of the Commissions rules, 47 C.F.R. § 69.105(b)(2)-(3) IS GRANTED subject to the limitations and conditions described herein.

96. IT IS FURTHER ORDERED that the information collections contained in these rules become effective January 1, 1998, following OMB approval, unless a notice is published in the Federal Register stating otherwise.

97. IT IS FURTHER ORDERED that, except as otherwise specified herein, the policies and rules adopted here shall be effective January 1, 1998.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

APPENDIX -- Final Rules

AMENDMENTS TO THE CODE OF FEDERAL REGULATIONS

Part 69 -- ACCESS CHARGES

1. The authority citation for Part 69 continues to read as follows:

Authority: 47 U.S.C. §§ 154(i) and (j), 201, 202, 203, 205, 218, 254, and 403.

2. Section 69.4 is amended by removing paragraph (h)(6), and revising paragraph (a) to read as follows:

§ 69.4 Charges to be filed.

(a) The end user charges for access service filed with this Commission shall include charges for the End User Common Line element, and for line port costs in excess of basic, analog service.

* * * * *

3. Section 69.111 is amended by substituting § 69.123 wherever § 69.124 occurs, and revising paragraph (c)(1) to read as follows:

§ 69.111 Tandem-Switched Transport and Tandem Charge.

* * * * *

(c)(1) Until June 30, 1998:

(i) Except in study areas where the incumbent local exchange carrier has implemented density pricing zones as described in section 69.123, per-minute common transport charges described in subparagraph (a)(1) shall be presumed reasonable if the incumbent local exchange carrier bases the charges on a weighted per-minute equivalent of direct-trunked transport DS1 and DS3 rates that reflects the relative number of DS1 and DS3 circuits used in the tandem to end office links (or a surrogate based on the proportion of copper and fiber facilities in the interoffice network), calculated using the total actual voice-grade minutes of use, geographically averaged on a study-area-wide basis, that the incumbent local exchange carrier experiences based on the prior year's

annual use. Tandem-switched transport transmission charges that are not presumed reasonable shall be suspended and investigated absent a substantial cause showing by the incumbent local exchange carrier.

(ii) In study areas where the incumbent local exchange carrier has implemented density pricing zones as described in section 69.123, per-minute common transport charges described in subparagraph (a)(1) shall be presumed reasonable if the incumbent local exchange carrier bases the charges on a weighted per-minute equivalent of direct-trunked transport DS1 and DS3 rates that reflects the relative number of DS1 and DS3 circuits used in the tandem to end office links (or a surrogate based on the proportion of copper and fiber facilities in the interoffice network), calculated using the total actual voice-grade minutes of use, averaged on a zone-wide basis, that the incumbent local exchange carrier experiences based on the prior year's annual use. Tandem-switched transport transmission charges that are not presumed reasonable shall be suspended and investigated absent a substantial cause showing by the incumbent local exchange carrier.

* * * * *

4. Section 69.153 is amended by revising paragraphs (c)(1) and (d), and adding paragraph (g) to read as follows:

§ 69.153 Presubscribed interexchange carrier charge (PICC)

* * * * *

(c) The maximum monthly PICC for primary residential subscriber lines and single-line business subscriber lines shall be the lower of:

(1) One twelfth of the sum of projected annual common line revenues and residual interconnection charge revenues permitted under our price cap rules divided by the projected average number of local exchange service subscriber lines in use during such annual period, minus the maximum subscriber line charge calculated pursuant to § 69.152(d)(2); or

(2) * * *

(d) To the extent that a local exchange carrier cannot recover its full common line revenues, residual interconnection charge revenues, and those marketing expense revenues described in § 69.156(a) permitted under price cap regulation through the recovery

mechanisms established in §§ 69.152, 69.153(c), and 69.156(b) and (c), the local exchange carrier may assess a PICC on multi-line business subscriber lines and non-primary residential subscriber lines.

(1) The maximum monthly PICC for non-primary residential subscriber lines shall be the lower of:

(i) One twelfth of the projected annual common line, residual interconnection charge, and § 69.156(a) marketing expense revenues permitted under our price cap rules, less the maximum amounts permitted to be recovered through the recovery mechanisms under §§ 69.152, 69.153(c), and 69.156(b) and (c), divided by the total number of projected non-primary residential and multi-line business subscriber lines in use during such annual period; or

(ii) * * *

(2) If the maximum monthly PICC for non-primary residential subscriber lines is determined using paragraph (d)(1)(i) of this section, the maximum monthly PICC for multi-line business subscriber lines shall equal the maximum monthly PICC of non-primary residential subscriber lines. Otherwise, the maximum monthly PICC for multi-line business lines shall be the lower of:

(i) One twelfth of the projected annual common line, residual interconnection charge, and § 69.156(a) marketing expense revenues permitted under parts 61 and 69 of our rules, less the maximum amounts permitted to be recovered through the recovery mechanisms under §§ 69.152, 69.153(c) and (d)(1), and 69.156 (b) and (c), divided by the total number of projected multi-line business subscriber lines in use during such annual period; or

(ii) * * *

* * * * *

(g)(1) The maximum monthly PICC for Centrex lines shall be one-ninth of the maximum charge determined under paragraph (d)(2) of this section, except that if a Centrex customer has fewer than nine lines, the maximum monthly PICC for those lines shall be the maximum charge determined under paragraph (d)(2) of this section divided by the customer's number of Centrex lines.

(2) In the event the monthly loop costs for a multi-line business line, as defined in § 69.152(b)(1), exceed the maximum permitted End User Common Line charge, as set in § 69.152(b)(3), the maximum monthly PICC for a Centrex line determined

under paragraph (g)(1) of this section shall be increased by the difference between the monthly loop costs defined in § 69.152(b)(1) and the maximum permitted End User Common Line charge set in § 69.152(b)(3). In no event, however, shall the PICC for a Centrex line exceed the maximum established under paragraph (d)(2) of this section.

5. Section 69.155(c) is revised to read as follows:

§ 69.155 Per-minute residual interconnection charge.

* * * * *

(c)(1) No portion of the charge assessed pursuant to paragraphs (a) or (b) of this section that recovers revenues that the local exchange carrier anticipates will be reassigned to other, facilities-based rate elements, including the tandem-switching rate element described in § 69.111(g), the three-part tandem switched transport rate structure described in § 69.111(a)(2), and port and multiplexer charges described in § 69.111(l), shall be assessed upon minutes utilizing the local exchange carrier's local switching facilities, but not the local exchange carrier's transport service.

(c)(2) If a local exchange carrier cannot recover its full residual interconnection charge revenues through the PICC mechanism established in § 69.153, and will consequently recover a portion of its residual interconnection charge revenues through per-minute charges assessed pursuant to paragraphs (a) and (b) of this section, then the local exchange carrier must allocate its residual interconnection charge revenues subject to the exemption established in paragraph (c)(1) of this section between the PICC and the per-minute residual interconnection charge in the same proportion as other residual interconnection charge revenues are allocated between these two recovery mechanisms.